**S.B.CIVIL WRIT PETITION NO. 6110/2007**
**(Lala Ram Vs. State of Rajasthan & ors.)**

Date of order : 30th October 2007

**HON'BLE MR.JUSTICE DINESH MAHESHWARI**

Mr. Anil Kaushik, for the petitioner.

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**BY THE COURT:**

The petitioner, working on the post of Physical Training Instructor Gr.III having been transferred from Government Upper Primary Schoool, Awai, Panchayat Samiti Jaisalmer to Government Upper Primary School, Swamiji-Ki-Dhani, Panchayat Samiti Sakda, District Jaisalmer seeks to question his transfer order by way of this writ petition.

Learned counsel for the petitioner has strenuously argued that the impugned transfer order made by the State Government is wholly without jurisdiction. Learned counsel submitted that Sub-section (8-A) of Section 89 of the Rajasthan Panchayati Raj Act, 1994 ('the Act of 1994') having been inserted by way of amendment, for its very nature, could only be referred to Rule 289 and Rule 290 of the Rajasthan Panchayati Raj Rules, 1996 ('the Rules of 1996'); and, according to the learned counsel, under the scheme of the Act and the Rules it could only operate towards desired transfers, i.e., the employee desiring transfer or desired to be transferred

whose name is communicated to the District Establishment Committee; and else, such provisions do not override the powers of the Chief Executive Officer of Zila Parishad who is the only competent authority to effect such transfers and, thus, the order issued by the Deputy Secretary to the Government is without jurisdiction. Learned counsel has relied upon the decision of this Court in the case of Nawab Beg Vs. State of Rajasthan & Ors.: 1999 (1) RLW 186.

Having examined the matter in its totality, this Court is of the view that though the petitioner seeks to question his transfer order by way of this writ petition but there remains available specific alternative remedy of assailing the impugned transfer order by way of appeal before the Rajasthan Civil Services Appellate Tribunal; and the grounds sought to be urged by the petitioner do not make out any such case that the writ petition be entertained while ignoring the alternative remedy.

The submissions in relation to the operation of the statute as suggested on behalf of the petitioner do not prima facie appear to be making out a case of absolute want of power and authority with the State Government and the case of the petitioner cannot be treated at par with the petitions decided or pending consideration before this Court where prima facie the very power of the Government in its

Panchayati Raj Department to make the order of transfer in relation to the employees concerned appeared to be questionable, like the one where the Government has proceeded to make the orders transferring the employees within the same Panchayat Samiti.

Rules 289 and 290 of the Rules of 1996 read as under:-

> "**Rule 289. Transfer within the district.**-(1) The name of the employee desiring transfer or desired to be transferred within the district shall be communicated to the district Establishment Committee by the Panchayat Samiti.
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> (2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or Zila Parishad concerned on the recommendation of the district Establishment Committee.
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> (3) State Government may issue orders regarding transfers from time to time. In case District Establishment Committee/Standing Committee of Panchayat Samiti does not agree, Chief Executive Officer/Vikas Adhikari as the case may be, shall carry out orders of the State Government.
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> (4) On transfer of the employee, his confidential roll and service record will be transmitted, without avoidable delay, to the Panchayat Samiti/Zila Parishad to whom his services have been transferred.
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> **Rule 290. Transfer outside the district.**- (1) The name of the employee desiring transfer or desired to be transferred from one district to another shall be communicated to the Director by the Panchayat Samiti or the Zila Parishad, as the case may be.

> (2) Posting by transfer of such an employee shall be made by the Panchayat Samiti or the Zila Parishad concerned on the recommendation of the State Government against the vacant posts existing at such time. The State Government may transfer any member of service from one Panchayat Samiti to another Panchayat Samiti within the same district or outside it, from one Zila Parishad to another Zila Parishad, or from Panchayat Samiti to Zila Parishad or from a Zila Parishad to Panchayat Samiti and may also stay the operation of, cancel, any order of transfer made under these rules. Chief Executive Officer or Vikas Adhikari concerned shall carry out such orders.
>
> (3) On transfer of an employee, his confidential roll and service record will be transmitted without avoidable delay to the Panchayat Samiti/Zila Parishad to whom his services have been transferred."
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> (underlining supplied for emphasis)

Sub-section (8-A) of Section 89 of the Act of 1994 reads as under:-

> " Notwithstanding anything contained in Sub-sec. (8), the State Government may transfer any member of the service from one Panchayat Samiti to another Panchayat Samiti, whether within the same district or outside it, from one Zila Parishad to another Zila Parishad, or from Panchayat Samiti to Zila Parishad or from a Zila Parishad to a Panchayat Samiti and may also stay the operation of, cancel, any order of transfer made under Sub-sec. (8), or the rules thereunder:"

A look at the Rules aforesaid and the source of wide powers of State Government that is, Sub-section (8-A) of Section 89 of the Act of 1994 prima facie makes out that it is

within the competence of the State Government to transfer an employee like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside the District. The order relating to the petitioner does not prima facie suffer from any want of authority nor appears to have been issued in violation of any statutory condition or requirement.

The provisions aforesaid have been referred only to notice that the present one is not a case where prima facie the transfer order could be said to be wholly unauthorized; and else, for being not inclined to entertain the matter in extra-ordinary writ jurisdiction because of availability of alternative remedy, this Court would not make final comment on the merits of the grounds sought to be urged by the petitioner.

This court is clearly of opinion that the petitioner could urge the grounds aforesaid before the Tribunal in an appeal that has been provided as a statutory remedy; and there is no special reason or circumstance wherefor the petitioner be permitted to by-pass such statutory remedy and to directly maintain a petition for writ.

Exercise of writ jurisdiction in this matter is refused; and the petition is rejected.

**(DINESH MAHESHWARI),J.**

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